

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Troy Luke Burks,)	C/A No.: 1:14-9-DCN-SVH
)	
Plaintiff,)	
)	
vs.)	
)	ORDER
Kela E. Thomas, Director; and Mr.)	
Sutherland, Parole Examiner,)	
)	
Defendants.)	
)	

Troy Luke Burks (“Plaintiff”), proceeding pro se and in forma pauperis, filed this action pursuant to 42 U.S.C. § 1983, alleging violation of his constitutional rights by Kela E. Thomas, Director of the South Carolina Department of Probation, Parole, and Pardon Service and Parole Examiner Sutherland (“Defendants”). This matter comes before the court on Plaintiff’s motion to compel [Entry #38] and Defendants’ motion to stay [Entry #40].

A review of the docket in this matter reveals that Defendants improperly filed a second answer on April 21, 2014, without seeking leave of court to file an amended answer pursuant to Fed. R. Civ. P. 15. [Entry #33]. The court issued a second scheduling order in error on April 22, 2014.¹ The Clerk of Court is directed to strike Defendants’ April 21, 2014, answer and the April 22, 2014, scheduling order. Defendants’ original answer [Entry #15] and the court’s scheduling order [Entry #16] remain on the docket as the operating documents.


¹ It appears that Defendants’ filing of an answer on April 21, 2014, triggered the Clerk of Court’s office to enter the undersigned’s standard scheduling order for § 1983 cases.

On May 28, 2014, Plaintiff filed a motion to compel alleging Defendants had failed to provide a response to requests for production he served on March 27, 2014. [Entry #38]. Defendants' responses were therefore due April 28, 2014. *See* Fed. R. Civ. P. 33(b)(3). Where no discovery response has been received, motions to compel must be filed within 21 days after the response was due. Local Civil Rule 37.01 (D.S.C.). Because Plaintiff failed to timely file his motion to compel, the undersigned denies the motion. In light of the court's ruling on Plaintiff's motion to compel, the undersigned denies as moot Defendants' motion to stay the deadline for responding to Plaintiff's discovery [Entry #40].

The court will rule on Defendants' motion for summary judgment upon the expiration of Defendants' reply deadline on June 9, 2014.

IT IS SO ORDERED.

June 6, 2014
Columbia, South Carolina



Shiva V. Hodges
United States Magistrate Judge